1947.

File No. S. Bel. 2/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Suits : Belgaum.

C.S. no. 192 of 1945.

Venkatesh Anantrao Kulkarni & 2 others .... Pltffs.

Vs.

(1) The Provincial Government, the Province of Bhay } Defts.
(2) The President, District-Local Board, Belgaum. }

Re: For a declaration that plaintiff No. 1 is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs Nos. 2 and 3 are not liable to be sold.

P. 35
E

File No. S. Bel. 2/47.

Std. Scott. Slip 24-B

CONTENTS.

Legal Department File No. S. Bel. 2/47.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Belgaum.	
		C.S. No. 192/1945.	
		V. A. Kulkarni & two others	
		v/s Plffs.	
		1) The Provincial Govt. The Province of Bom.	
		2) The President, District Local Board, Belgaum.	
		Defts.	
1)	Printed G.R.L.D. 4216. 7th June 1946.	Plaff. No. 1 is not liable for the toll dues and the suit lands. Sanctioning the defence of the suit.	21
2)	G.R.L.D. 5228 22nd May 1947	Recording the result of the suit.	25
3)	G.R.L.D. 10313 28th Oct. 1947.	Sanctioning the defence of C. Appeal No. 118/1947	35
4)	G.R.L.D. 10489/E 19th May 1955	Recording the result of the appeal.	39

Regular Civil Suit No.192 of 1945.
THE COURT OF THE FIRST CLASS SUB JUDGE AT BELGAUM.

1. Venkatesh Anantrao Kulkarni age 48, Occupation Agriculture, brahmin of Karvi--Karvinkop, Taluka Belgaum.
2. Anant Timmaji Kulkarni, age, 22, Occ. student, Brahmin of -do-
3. Krishnaji Bhimaji Kulkarni, age 16, Occ. student, Bhrahmin, minor by his guardian Gangabai Bhratar Bhimaji Kulkarni, ~~age 30, occ.~~ Household work, Brahimin of -do-

} Plaintiffs.

VS.

1. The Provincial Government, the Province of Bombay.
2. The President, D.L.B., Belgaum.

} Defendants.

Claim ..... 30-6-0 for court-fee.
4290-5-3 for jurisdiction.

Herein the above-mentioned Plaintiffs beg to submit as under:

1. The Hirekudi toll of the D.L.B.Belgaum was contracted by Vijaendra Krishna Ganachari and others. Plaintiff 1 Venkatesh Anantrao Kulkarni, Narso Ramchandra Kulkarni and Bhimaji Anantrao Kulkarni were the only persons who stood surety for the said contract and it is learnt that the lands bearing R.S.Nos. 38, 43, 44 of Nagarhal Taluka Belgaum, have been mentioned in the surety bond for the same. This was done in the year 1934-35.

2. The D.L.B., failed to recover the amount from the Toll-contractor and the D.L.B. therefore through the Collector of Belgaum recovered the whole amount of the said contract from the second surety Narso Ramchandra Kulkarni. The whole of the balance was actually recovered by the sale of the said lands in recovery proceedings and were even confirmed. This surety bond must, therefore, be deemed to have been discharged as soon as the sales were confirmed and the balance of the Toll-Contract was recovered and credited into the treasury.

3. Inspite of this, discharge of the Plaintiff 1, recovery proceedings have been again started against Plaintiff 1 and the lands belonging to Plaintiffs Nos. 2 and 3 by their partition arrangement (R.S.No. 151, 238/1, 23/1 of Karvinkop)* have been proclaimed for sale by the Mamlatdar and the Mamlatdar taluka Belgaum has fixed 20th March 1945 as the date of auction of these lands.

* and some of belonging to pltfs. Nos. 1 (R.S. No. 85/1, 85/3, 85/5 & 13/5 of Karvinkop)

4. The D.L.B. and the Collector have no legal right and have no jurisdiction to put up to sale the Karvinkop lands of the Plaintiffs by starting recovery proceedings again after the balance of the Toll-contract was once recovered and credited from the Second surety Narso Ramchandra Kulkarni and thus by their conduct discharged the surety bond. Once the amount was recovered from one surety, surety bond is deemed to be cancelled by being discharged, the Collector or the D.L.B. have no legal right to receive the surety bond by starting fresh recovery proceedings.

5. The lands now put up for sale are not those which are mentioned in the surety bond.

6. The father of Plaintiff 3 is dead and Anant Timmaji has nothing to do with the surety bond. The lands of Plaintiffs Nos. 2 and 3 mentioned in para 3 have fallen to their share in partition before the recovery proceedings and Plaintiff 1 Venkatesh Anant has no share and has no right, title and interest in their lands put up for sale.

7. Plaintiff 1 --2-

Plaintiff 1 had given a notice to the D.L.B. that the arrears from the Toll contractor were not being recovered in time and that he would not be responsible, if they failed to take proper measure in time. Inspite of this proper - - measures of recovery were not taken against the Toll-contractor within the proper time and hence the recovery from him was - - impossible. For this reason also Plaintiff 1 is not now liable for the arrears.

8. The court fee is paid on the declaration and relief for injunction and Rs. 4290-8-3 is for jurisdictionand cause of actio for the suit arose on the date when fresh recovery - - proceedings started against the plffs. after discharing the other surety on or about Feb.1942 and on the date when the suit lands were attached and proclaimed for sale as the proclamation on about a day in March 1945.

9. This suit being against the Provincial Government this Court has special juris iction to try this suit.

10. As the Defts. No.2 is making recovery through the Collector as arrears of Land Revenue, Deft. No. 1 is made a party to this suit and notice of suit to Defts is given under section 80 of the Civil Procedure Code and this suit is filed after expiry of the two months as per law.

1. The Plffs. therefore, pray for the following relief:--

(a) Plaintiff No. 1 be declared as not liable in any way for the arrears of the Toll-Contractor as per the surety bond.
(b) The recovery proceedings against him be permanently stopped and the proclamation of the sale of his lands be cancelled.
(c) It be declared that the Plaintiffs 2 and 3 have got the lands now included in the proclamation sale issued by the Mamlatdar, Belgaum, in a partition before the starting of recovery proceedings, against Plaintiff 1 and hence they are not liable to be proceeded against and a permanent injunction granted to stop the proceedings started against these lands and cancel the proclamation of their sale.

Belgaum,
2-6-45

Drafted and presented by

sd/-
Advocate.

We, Venkatesh Anantrao Kulkarni, Anant Timmaji Kulkarni and Gangabai Bhratar Bhimaji Kulkarni guardian of Krishnaji Bhimaji Kulkarni do hereby on solemn affirmation state that the facts stated above in paragraphs 1 to 8 are true to the best of our knowledge and understanding.

Belgaum,
2.6.45

sd/- (all concerned)

Belgaum suit No. 192 of 1945.

The plaintiff No.1, was one of the three sureties for the payment to the District Local Board of Belgaum for the toll ~~for~~ dues of Hirekudi by the toll contractors for the year 1934-35. The contractors having made a default, the properties of one of the sureties Narso Ramchandra Kulkarni were put to auction sale by the revenue authorities and sold on 16-11-194.. Subsequently the sale was set aside by the Collector on the ground that the surety had no saleable interest in the land. Thereafter the plaintiff No.1's undivided one-third share in certain lands was notified for sale. This suit is therefore filed for a declaration that plaintiff No.1 is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs 2 and 3 are not liable to be sold. The plaintiff No1 denies his liability under the mistaken notion that the arrears of the defaulting contractor were satisfied by the sale of the property of Narso: He is evidently ignorant of the subsequent order setting aside that sale. The auction sale which is objected to affects only the plaintiff's right title and interest in the suit lands. It cannot affect the interest of the other plaintiffs.

The suit may be defended on the lines of the amended brief and written statement.

24/5/46

A.A.L.R.

R. L.A.

1/6/46

Secy R.D

6/6/46

to U.R. to RE
No. 4824
dt. 31/6/46

In the Court of Civil Judge Senior Division, Belgaum.

Civil Suit No. 192 of 1945.

1. Venkatesh Anantrao Kulkarni and 2 others . Plaintiffs;

versus.

1. The Provincial Government, the Province of Bombay,
2. The President, Dist. Local Board, Belgaum. } Defendants.

Claim 30-6-0 for court fee
4290-5-3 for jurisdiction.

Written statement on behalf of the defendant No.1 (Province of Bombay) is as follows:-

1. The plaintiffs' claim is denied.

2. With regard to the averments in paragraph 1 of the plaint it is submitted that the lands being S.Nos. 38, 43 and 44 were mentioned in the solvency certificate of plaintiff No.1. and not in the security bond.

3. The allegations in paragraph 2 of the plaint are incorrect and hence denied. It is true that the toll bar dues of the defendant No.2, were tried to be recovered by the sale of the lands of the surety Narso Ramchandra Kulkarni, but that sale was subsequently set aside by the Collector and the sale proceeds ordered to be refunded to the bidders. Plaintiffs evidently appear to be ignorant of these orders.

4. The allegations in paragraph 3 of the plaint are also misleading and not admitted. Only the plaintiff No.1's undivided one-third share in the suit lands and in S.Nos. 85/1, 85/3, 85/5 and 13/5 has been notified for sale. The acution sale cannot affect the interest if any of the plaintiffs Nos. 2 and 3 in those lands.

5. The plaintiff No.1 is jointly and severaly liable with the other sureties for the contractors' default in the payment of toll bar dues to defendant No.2. These dues can be realised as a demand for land revenue by the sale of any property belonging to him. The allegation in paragraph 5 of the plaint are misconceived.

6. Plaintiffs are put to strict proof of the allegations in paragraph 6 of the plaint.

7. It is, therefore, submitted that the suit against this defendant must be dismissed with costs.

District Government Pleader,
Belgaum.

I , District Government Pleader, Belgaum do hereby declare that what is stated in paras 1 to above is true according to the information received and believed to be true. This verification is made at on the day of 1946.

District Government Pleader,
Belgaum.

Suit No.192/45. 9 Ex 27

I s s u e s.

1. Are the facts alleged in para 2 of the plaint proved ?
2. If so, are the other sureties thereby discharged from the surety bond ?
3. Are the allegations in para 7 of the plaint proved ?
4. If so, is plaintiff no.1 thereby discharged from the surety bond ?
5. Do plaintiffs prove that the lands mentioned in para 3 of the plaint belong to plaintiff No.2 and 3 and that plaintiff no.1 has no right, title or interest in them ?
6. Are these lands liable to be sold for the recovery of the Toll contract dues ?
7. What reliefs, if any, are plaintiffs entitled to ?
8. What orders ?

Belgaum, no more sought.
22.7.1946.

Sd.D.R.Ugrankar.
Civ.Judge, S.D.Belgaum.

11 28

Received on 9-6-1945.

Registered on 9-6-1945-

Decided on 4-3-1947.
Y. M. Days.
Duration- 1-8- 25.

Exh.138.

In the court of the Civil Judge,Senior Division,At Belgaum.

Regular Civil Suit No.192 of 1945.

Pleaders.

M/S.Mandgi & .H.Mutalikdesai.

1. Venkatesh Anantrao Kulkarni,age 48, occ.agri.,Br.of Kanvikoravinkop, Tal.Belgaum.
2. Anant Timmaji Kulkarni,age 22,occ. student rest do.
3. Krishnaji Bhimaji Kulkarni,age 16, occ.student Brah.,minor by his guardian Gangabai W/O.Bhimaji Kulkarni,age 30, occ.household work rest do... ... ... Plaintiffs.

Against.

Mr.B.V.Jakati D.G.P.Belgaum.

1. The Provincial Govt. The Province of Bombay.

Mr.S.I.Guttigoli.

2. The D.L.B.,Dist.Belgaum,by its Chief Officer,Mr.M.P.Wali,D.L.B. Belgaum ... ... Defendants.

Claim Rs. 37-8-0 for court-fee
" 4290-5-3 " jurisdiction.

The plaintiffs sue for the following reliefs:- (a) Plaintiff no.1 be declared as not liable in any way for the arrears of the Toll-contractor as per surety bond; (b) the recovery proceedings against him be permanently stopped and the proclamation of the sale of his lands be cancelled; (c) it be declared that the plaintiff Nos.2 & 3 have got the lands now included in the proclamation of s sale issued by the Mamlatdar of Belgaum in a partition before the starting of the recovery proceedings against plff.no.1 and hence they are not liable to be proceeded against and a permanent injunction be granted to stop the proceeding started against those lands and cancel the proclamation of sale. The allegations in the plaint are as follows: One Vijayendra Krishna Ganachari and others took the Hirekudi Toll contract from the District Local Board,Belgaum. Plaintiff no.1, Narso Ramchandra Kulkarni and

and Bhimaji Anantrao Kulkarni stood sureties.It is learnt that the lands bearing R.S.Nos.38,43 and 44 of Nagarhal have been mentioned in the surety bond.This was in the year 1934-35. The District Local Board failed to recover the amount from the Toll contractor. The Board,therefore,through the Collector of Belgaum,recovered the whole amount payable under the contract from the second surety Venko Ramchandra Kulkarni by the sale of the said lands.That sale was even confirmed. Therefore the surety bond must be deemed to have been discharged. As soon as the sales are confirmed and the amount realised by the sale credited into the Treasury. Inspite of this recovery proceedings have been again started against plff.no.1.Therein lands belonging to plffs. Nos.2 and 3 by their partition arrangement namely,R.S.nos. 151,238/1 and 23/1 of Karavinkop and also some lands belonging to plff.no.1 namely,R.S.Nos.85/1,85/3,85/5 and 13/5 of Karavinkop , have been proclaimed for sale by the Mamlatdar of Taluka Belgaum w/o has fixed 20th March 1935 as the date of auction of these lands. The Board and Collector have no legal right and jurisdiction to put up to sale the Karvinkop lands of the plff.after having once recovered the due amount from the second surety Narso Ramchandra Kulkarni and credited the amount by which conduct the surety bond was discharged.The lands now put up for sale are not those which are mentioned in the surety bond.The father of plff.no.3 is dead.Anant Timmaji i.e. plff.no.2 has nothing to do with the surety bond.The lands of plffs.nos.2 and 3 have fallen to their shares in a partition before the recovery proceeding and plff.no.1 has no right,title or interest in them. Plff.no.1 had given a notice to the Board that the arrears were not being recovered in time from the Toll Contractor and so if they fail to take proper steps in time,he would not be responsible.Inspite of this notice proper recovery measures were not taken against the Toll contractor in proper time and hence the recovery from him became impossible.Therefore plff. no.1 is not now liable for the arrears.Deft.no.2 is the Board.

The recovery measures are being taken through the Collecto in the same manner as recovery of arrears of land revenue. Therefore the Provincial Govt.has been sued as deft.no.1. Notice under Sec.80,C.P.C.,has been given.

2. The written statement of theProvincial Govt. and the D.L.B.(Exhs.21 and 24) are as follows:The lands S.Nos. 38,43 and 44 of Nagarhal were mentioned in the solvency certificate of plff.no.1 and not in the surety bond.It is true that the lands under the surety Haraso Ramchandra Kulkarni were sold for the Toll contract dues.But that sale was subsequently set aside by the Collector and the purchase money was ordered to be refunded.What is now sought to be sold is only the undivided 1/3 share of plff. no.1 in all the lands at Karavinkop mentioned in para 3 of the plaint.That auction sale cannot affect the interest of any of the plffs.no.s2 and 3 in those lands.Plff.no.1 is jointly and severely liable along with the other sureties for the default of the contractor, Those dues can be recovered in the same manner as arrears of land revenue by the sale of any property belonging to plff.no.1.The allegation in the plaint that those lands are not mentioned in the surety bond and therefore not saleable is misconceived Plffs.are put to strict proof of the allegation that there was a partition between them before the recovery proceedings and some of the lands put up for sale belong exclusiv ly to plffs.nos.2 and 3 by allotment at the partition and that plff.no.1 has no share in them.

3. The issues settled for determination,vide Exh.27, are as follows:-

1. Are the facts alleged in para 2 of plaint proved?
2. If so,are the other sureties thereby discharged from the surety bond?
3. Are the allegations in para 7 of plaint proved?
4. If so,is plff.no.1 thereby discharged from suretybond?
5. Do plffs.prove that the lands mentioned in para 3 of the plaint belong to plff Nos.2 and 3 and that plff.1 has no right,title or interest in them?

6.Are those lands liable to be sold for the recovery of the Toll contract dues?

7.What reliefs,if any,are plffs.entitled to?

8. What orders?

4. My findings are:- 1. No. 2. Issue does not survive.

3.No. 4.Issue does not survive;if necessary my finding would be in the negative.

5.No. 6.Yes. 7.Nil. 8.Suit dismissed.

R e a s o n s.

5. The facts leading up to the present suit are as follows:- The right to recover the toll at the Jirekudi toll bar on the Chikodi-Kurundwad Road during the year 1st April 1934 to 31st March 1935 was auctioned by the Belgaum D.L.B.under Sec.10 of Tolls on the Roads and Bridges Act(Bombay Act No.III of 1875).That right to recover toll vests in the D.L.B. under Sec.117 of the Bombay Local Boards Act(Bombay Act No.VI of 1923).At that auction four brothers whom I will style by their sirname Ganacharis,jointly bid Rs.3205 and their bid was accepted.In accordance with the conditions of the lease they executed a bond, It is exh.36 dated 6.6.1934,with three sureties,i.e.Narso Ramchandra Kulkarni,Bhimaji Anantrao Kulkarni,& Venkatesh Anantrao Kulkarni.The last surety is plff.no.1 in this suit.Plff.3 is the son of Bhimaji.Plff.no.2 is the son of a brother of those two sureties.It is undisputed that the three sureties have signed the bond exh.56 as sureties and held themselves liable as sureties for the contractors Ganacharis.In exh.56,it is stated that the amount of Rs.3205 shall be paid in four instalments i.e.on 30th June,30th September,31st December 1934 and 15th February 1935. On 17th May 1934,Ganachari paid Rs.400(see exh.99).They had already deposited Rs.321/-as earnest money(Bayana).Ganachari did not pay any more instalments on the due dates.On 20.10.1934, 19.1.1935 and 28.2.1935 the D.L.B. served Ganacharis with notices calling upon them to pay (see exhs.88,89 and 91).On 1.2.35, plff.no.1 invited the attention of the D.L.B.to the fact that Ganacharis had not paid the instalments as stipulated,and to that the D.L.B.gave reply exh.59 that if by the end of the year Ganacharis fail to pay they would take the necessary action

through the Collector for recovering the dues.That reply is dated 28.2.1945.On thatvery day they gave reply exh.91 to Ganacharis.On 18.4.1935 the D.L.B.served Ganacharis wi a notice that the Collector would be moved unless they paid within a week(Exh.93).Thereafter on 10.5.1935,the Board moved the Collector of Belgaum to recover the amoun of dues,Rs.2448/-from the Ganacharis or their sureties as an arrear of Land Revenue under Sec.10 of the Bombay Act III of 1875. That is also provided by sub-sec.(3)of Sec. 117 of Bombay Local Boards Act,1923.By exh.83 dated - 18.10.1935,the Board moved the Prant Officer,S.D.,Belgaum to ask the Mamlatdar of Sampgaon to arrange to take immediate steps to recover the dues in question from the defaulters or their sureties.Thereafter Ganachari's lands and house were proclaimed for sale vide exh.134 on -- 20.5.1936.That proclamation is dated 20.3.1936.That attempted sale proved abortive as also a second attempt o 30.3.1937 vide exh.135.Then on 5.7.1937,the surety Narso wrote to the Asstt.Collector that another attempt may be made to sell Ganachari's properties and that he would arrange to keep bidders present(exh.129).He also wrote similarly to the Mamlatdar vide exh.130 dated 19.10.1937. In this application he mentioned the three survey Nos.and a house proclaimed for sale as immoveable properties of Ganacharis.At the 3rd attempt the lands of Ganacharis wer sold,on 25.11.1937. Exh.136 is the office copy of the pro clamation of sale.In that sale Rs.637/- were realised. It may be noted from exh.130 that the Panch valuation of the land was Rs.1250/- and also that Narso Ramchandra a surety had been informed about this intended sale.In the arguments the plff.'s pleader has complained that the D.I B.has not produced Ganachari's solvency certificate.He h has relied on the bond exh.56 that Ganacharis will not encumber the properties mentioned in their solvency certi ficate unless and until the whole amount is paid.Therefor it is argued that is is not shown that the land sold and

the house were all the properties mentioned in the solvency certificate and which were available for realisation of the dues.I am unable to draw any inference adverse to the bona fides of the D.L.B.from the non-production of Ganacharis' solvency certificate.It is evident that surety Narso Ramchandra was vigilent in the matter of the recovery of the dues from Ganacharis. It is also clear from the depesition of the plff.no.1exh.52, para 4 that he was also similarly vigilent.But he says that in his application he had asked the D.L.B.to take possession of the toll-bar for the remaining period of the lease.Assuming that from the non-production of his application by the D.L.B.(exh.60)it should be inferred that he did write to the D.L.B. on 1.2.1935 and that the contents of his letter were as stated by him,under the terms of the Bond exh.56,the D.L.B. had no power to take the toll bar into its possession and recover the tolls direct.In his deposition the plff.no.1has not mentioned what other properties were owned by the Ganacharis and could have been proceeded against by the D.L.B. A suggestion has been put forward that Narso Ramchandra was colluding with the Ganacharis.But Narso Ramchandra's two applications Exhs.129 and 130 clearly show that he was not at all colluding with Ganacharis.The sureties had guaranteed payment by Ganacharis and it was therefore the duty of plff.1 to make available to the Board such properties of Ganacharis as could be proceeded against.Therefore,the suggestion that the D.L.B.were negligent and not taking all possible steps against Ganacharis is unsustainable.

6. The sale of Ganachari's house was attempted again in December 1940.The order of the D.D.C.in that connection(Exh.118 dated 28.11.1940)shows the condition of the house and the likely demand for such a house.Exh.119 is the proclamation of sale. It is no wonder that there were no bidders at that sale,as reported by the Mamlatdar(exh.120). In my judgment the whole of this record of the steps taken against Ganacharis clearly shows that the D.L.B. and the Revenue Officers took every possible step to recover the amount from the Ganacharis.

7. Thereafter as is stated in the Mamlatdar's report exh.120

17 55

steps were taken against the sureties.The surety Narso Ramchandra was proceeded against first.His solvency certificate exh.114 sets out the S.Nos.of his lands.Those lands were proceeded against.But in the meanwhile,it appears that Narso wanted a further attempt to be made for the sale of Ganachari's house and was informed by the Mamlatdar that the house did not attract any bidders and therefore the D.D.C. had ordered that the surety should be proceeded against (exh.121 dated 6.2.1937). Accordingly all the lands mentioned in Narso Ramchandra's solvency certificate exh. 114 were proclaimed for sale on 16.11.1942(vide exh.116)and they were sold.Exh.115 is the list of bids.Thereupon Narso's son Ramchandra made the application exh.117 dated 26.11.1942 for setting aside the sale on the ground that Narso hadno interest in the lands.The Mamlatdar made his report setting out the grounds on which according to him the application made by Narso and his son for setting aside the sale should not be granted(exh.128 dated 14.12.36). Thereafter the Collector set aside the sale.Ex exh.61 is a certified copy of the Collector's order dated February 194 In this suit I am not concerned with the correctness or otherwise of the Collector's reasons for that order.The sa sale was according to the procedure laid down in the Bomba Land Revenue Code for the recovery of arrears of Land Reve nue.The Collector's order is therefore within hislegal powers under Sec.178 of the Bombay Land Revenue Code. The Record of Rights extracts exhs.102 to 107 bear out the ground stated in the Collector's order that the lands stoo in the name of Ramchandra and not in the name of Narso even before the sale-proceedings were started.The plffs. took out the summons to Ramchandra Narso Kulkarni to produce a certain chalan,but did not call upon him to come and depose.That gentleman sent the chalan with the witness Jiwaji Shriniwas Kulkarni(exh.112)and the chalan is exh.113 From this chalan it is attempted by the plffs.to show that the price at the sale was actually paid by Narso himself.

The chalan does not justify any such inference.It shows that on 17.11.1942 Ramchandra Narasinh Kulkarni deposited in the Sub-Treasury the amount of Rs.1025/-as on account of "The realised at the auction sale on account of the Hirakudi toll Naka on 17.11.1942." Having regard to the fact that Ramchandra applies only nine days later for setting aside the sale,it is improbable that this amount could have been paid by him or his father Narso Ramchandra.If any such interpretation was to be attributed, Ramchandra himself was a material witness and should have been examined.At any rate the fact remains that the amount was ordered to be refunded to the auction purchaser and was in fact refunded to them (see exh.61 and the endorsement below it).The D.L.B. didnot receive that amount and that is clear from their communication exh.137 and the Mamlatdar's reply dated 18.4.1943. The D.L.B.could donothing further in the matter as under the law the dues had to be recovered through the Revenue Officers and they were seized of the matter.I,therefore,hold that the facts alleged in para 2, of the plaint are not proved.So the second issue does not arise.

8. Issues 3 and 4: I have referred to the communication addressed by Narso Ramchandra and plff.no.1 to the D.L.B. It was not within the competence of the D.L.B. to take possession of the toll bar, and assuming that it was open to them to do so and that plff.no.1 had intimated to the Board that they should do so,the omission on the part of the Board to do so cannot absolve the sureties from their liability.It may be noted that in exh.56 there is no such condition that the Board should enter into possession of the toll bar if a default was committed.Therefore,the omission to take possession of the toll bar is not an act which the Board's duty to the sureties required the Board to do within the meaning of that expression in Sec.139 of the Indian Contract Act.Sec.137 of the Indian Contract Act will be applicable to this case if the Board had the power to take the toll bar in its possession from the Contractor.

9. I have already noticed that other properties of the Ganacharis were not pointed out.In my judgment,therefore,the

allegation in para 7 of the plaint that proper measures fo recovery were not taken against Ganacharis within proper time is not substantiated. Assuming that the plff.no.1 had indicated the method of taking possession of the toll bar and recovering the dues direct ..an allegation whibh is no to be found in para 7 of the plaint, I would hold on p issue no.4 that plff.1 is not discharged by reason of the Board's omission to take such a step.

10. Under the Bond, exh.56, and Sec.128 of the Indian Contract Act the liability of each of the surety is co-extensive with that of the principal debtor. Therefore the recovery of the balance can be made from plff.1 alone. Exh. 80 shows that only the right, title and interest of plff.1 i the lands specidied in that proclamation have been put up for sale. That proclamation is dated 10.1.44 and the date o the auction sale mentioned therein is 13.3.44. The lands se out therein are all the lands which are mentioned in para and 6 of the plaint as having been the joint family proper ties of the three plffs. and having been divided between them. Plff.1 has admitted that there is no deed of partitio Plffs.2 and 3, who are really interested in showing that so of those lands have fallen absolutely to their share, have not themselves entered the witness-box. Plff.1 has deposed that partition was effected by giving intimation (Vard to the village officers. According to plff1 the partition t took place between Holi and Yugadi of 1944, i.e. March or April 1944, i. That is certainly after the date proclaimed for the first auction sale (Vide exh.80). But exh.62 shows that the intimation of the alleged partition was given by Vardi on 25.2.45; and plff.1 has deposed that that vardi wa given 4 and 6 days after the partition (exh.52, para 7), whith answer would fix the date of partition in about Feb.1945 and that date is certainly after the date of the auction sale proclaimed for the second time in ex.82. Having regard to these answers it is impossible to believe the allegation of the plffs. that there has been an actual partition

between them.There can be no doubt that this Vardi has been resorted to merely in order to obstruct the recovery proceedings. Plff.1 has admitted(exh.52,para7)that at the date when the Vardi was given he knew that these lands had been put up for sale for the recovery of the toll bar dues.I,therefore,hold that this entry of a partition found in exh.62 is bogus and does not evidence a real partition at all.Therefore my findings on issues Nos.5 and6 are in thenegative.

11. In this connection,I may note that in the application, exh.53,made by these plffs.on 7th March 1944,the date of the alleged partition is not mentioned and it is further alleged, contrary to what appears in exh.62 and in para 3 of the plaint, that all the lands put up for sale have fallen to the shares of plffs.nos.2 and 3and the surety plff.1 has no interest in any of them. That exposes the hollowness of the plffs.'case that there has been a partition.

12. It has been next argued that these lands proclaimed for sale are not mentioned in the solvency certificate and that under exh.56 the lands mentioned in the solvency certificate are charged and those only can be sold.I cannot agree with that construction of exh.56, Thereunder the sureties are personally liable and not merely their lands mentioned in their solvency certificates.Therefore the Privy Council ruling relied upon by the plffs' pleader,Kesarchand Vs.Uttamchand,A.I.R.1945 P.C.91, has no application here.That decision is based on the express terms of the surety bond in that case which limited the scope of the liability to proceedings against the properties specified only.In the present case it is undisputed that the signatures made by the three sureties as "sureties" on exh.56 mean that they hold themselves liable for the dues of the contractors.There is no further qualification at all.Therefore,they are personally liable.

13. It follows,therefore,that the plffs.are not entitled to any of the reliefs prayed for by them.

O R D E R.

Suit dismissed.Plffs.do pay the costs of the defts.and do bear their own costs.

Sd.D.R.Ugrankar.
Civil Judge,S.D.Belgaum.
4.3.1947.

Suits :

Belgaum.

For a declaration that plaintiff No. 1 is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs Nos. 2 and 3 are not liable to be sold.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4216.

Bombay Castle, 7th June 1946.

Letter from the Collector of Belgaum, No. L.A.W. 668, dated the 18th February 1946—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 192 of 1945.

(1) Venkatesh Anantrao Kulkarni and two others ... Plaintiffs;

versus

(1) The Provincial Government, the Province of Bombay
(2) The President, District Local Board, Belgaum } Defendants.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 355, dated the 5th March 1946—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 4215, dated the 7th June 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original -P. N. MOOS,-
Secretary to Government.

G. R., No. 4216, L. D., dated the 7th June 1946.

To

*The Revenue Department.
*The Commissioner, Southern Division.
*The Collector of Belgaum.
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

234

BELGAUM CIVIL SUIT No. 192 OF 1945.

Chronological Statement of Facts.

1. The suit is for a declaration that the plaintiff No. 1 is not liable for the toll bar dues at Hirekodi (Taluka Chikodi) for the year 1934–35 and that the properties in the suit which are the joint family properties of plaintiffs Nos. 1, 2 and 3 are not liable to be sold for such dues, and for consequential injunction.

2. The District Local Board toll bar at Hirekodi (Taluka Chikodi) was farmed out to one V. K. Ganachari and his three brothers for the year 1934–35 for Rs. 3,205. The toll agreement was executed on 6th June 1934. The plaintiff No. 1 and two others, Narso Ramchandra Kulkarni and Bhimaji Anant Kulkarni had signed the agreement as sureties for the principal toll contractors.

3. The contractors having made a default in the payment of the toll bar dues, the District Local Board tried to recover arrears through the revenue authorities. Under section 117 (*3*) of the Bombay Local Boards Act of 1923, any sum due to a board in respect of any toll leased under this section could be recovered as an arrear of land revenue. Consequently, on 25th November 1937, the defaulter's immoveable properties were put to auction sale and realised Rs. 637. Steps were then taken to realise the balance of arrears from the three sureties who were jointly and severally liable.

File pp. 250–251

4. On 16th November 1942, the properties of the surety Narso Ramchandra Kulkarni were sold by auction for the toll bar arrears which at that date had amounted to Rs. 3,816–1–7. The sale realised a sum of Rs. 4,025. However, in February 1943, this sale was set aside by the Collector on the ground that these lands were not hypothecated for the dues of the District Local Board and that the surety had no saleable interest in the lands which at that date stood in the name of his son.

File p. 508

File p. 530

File p. 541

5. Proceedings were then started for the recovery of the arrears from the plaintiff who was also one of the sureties. On 13th March 1944, the plaintiff's undivided one-third share in suit land was proclaimed for sale.

File pp. 605–607

6. On 7th March 1944, the plaintiffs applied to the Collector for stay of the sale on the ground that the toll bar dues had been satisfied out of the sale proceedings of the land belonging to Narso Ramchandra Kulkarni and that the lands put up for sale had been allotted to plaintiffs Nos. 2 and 3 in a partition. On 16th June 1944, the Collector rejected the petition.

File p. 639

File p. 667

7. On 13th March 1945, the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code and filed the present suit on 5th September 1945, in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. The plaintiffs contend (1) that the recovery proceeding against them are illegal and unjustified because all the dues of the District Local Board were satisfied out of the sale proceeds of the lands belonging to the surety Narso Ramchandra Kulkarni and (2) that the suit lands which have been allotted to the plaintiff Nos. 2 and 3 in a family partition are not liable to be sold for the amount due from plaintiff No. 1.

2. There is no substance in the first contention. It has been pointed out in paragraph 4 of the Statement of Facts that the auction sale of the lands belonging to Narso Ramchandra was set aside by the Collector in February 1943 and the sale proceeds were ordered to be refunded to the bidders. Evidently the plaintiffs have raised this contention in ignorance of the Collector's order. As regards the second contention only the first plaintiff's undivided one-third share in the lands bearing Survey Nos. 85/1, 85/3, 85/5, 13/5, 151, 238/1 and 23/1 of Karvinkop has been proclaimed for sale. If, as alleged in paragraph 3 of the plaint, the last three survey numbers have become the property of plaintiffs Nos. 2 and 3 it is obvious that the auction sale cannot confer any title on the purchaser in respect of these lands.

3. It is contended in paragraph 1 of the plaint that only Survey Nos. 38, 43 and 44 of the village of Nagerpal were mentioned in the "surety bond", of the plaintiff No. 1. Possibly, the plaintiffs appear to contend that only these lands can be sold for the liability of plaintiff No. 1 as a surety. These lands are mentioned in the solvency certificate of plaintiff No. 1 and not in the surety bond as alleged. Under sections 43 and 128 of the Indian Contract Act, the plaintiff No. 1, and the two other sureties are jointly and severally liable for the contractors' dues to the District Local Board and these dues can be recovered from all or any of them as a demand for land revenue by putting to sale their interest in any property. There is no substance in the argument that only the property mentioned in the solvency certificate could be sold for the liability of the plaintiff No. 1.

File p. 651

4. For these reasons, it should be urged that the suit fails and must be dismissed with costs.

Suits: 25

Belgaum.

For a declaration that plaintiff No.1 is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs Nos. 2 and 3 are not liable to be sold.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 5228
Bombay Castle, 22nd May 1947.

Read Government Resolution, Legal Department, No. 4216, dated the 7th July 1946.

Endorsement by the District Government Pleader, Belgaum, No.O.S.192/45, dated the 14th March 1947, stating that the suit noted in the margin was decided by the Civil Judge, (Senior Division), Belgaum, on 4th March 1947, when the following order was passed:-

"Suit dismissed. Plaintiff do pay the costs of the defendants and do bear their own costs".

In the Court of the Civil Judge (Senior Division), Belgaum.
Civil Suit No. 192 of 1945.
1. Venkatesh Anantrao Kulkarni and two others .. Plaintiffs;
vs.
1. The Provincial Government, the Province of Bombay,
2. The President, District Local Board, Belgaum .. Defendants.

Endorsement by the District Government Pleader, Belgaum, No.O.S.192/45, dated the 19th March 1947, forwarding uncertified copy of the judgment.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Original R. M. Mehta
R. M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum.

Ms. 21.5.

Subd. for signature.

KBB
21/5

S.A.S.

Issued
21/5

Submitted after issue

File in S:\...\Belgaum\4,7 (Next file)

KJB
23/5

SAS
23/5

D.G.P's letter OJ.192457/45
10-6-47.

2-

DECREE

Exh.139.

L.D.
R.I.7168/17-6-47

In the Court of the Civil Judge, Senior Division,

At - Belgaum.

S.Bel2/47

Regular Civil Suit No. 192 of 1945.

1. Venkatesh Anantrao Kulkarni, age 48, Occupation- Agriculture, Brahmin of Kanavi-Karninkop Taluka -Belgaum.
2. Anant Timmaji Kulkarni, age 22, Occ.Student, Brahmin of Do-
3. Krishnaji Bhimaji Kulkarni, age 16 Occ.Student, Brahmin, minor by his guardian Gangavai Bhratar Bhimaji Kulkarni, age, 30, Occn. Household work, Brahmin of do-

) PLFFS.

Vs.

1. The Provincial Government, The Province of Bombay.
2. The District LocalBoard, District -- Belgaum, by its Chief Officer Mr.M.P. Wali D.L.B., Belgaum.

) DEFTS.

Claim Rs.37.8.0 for Court fee.

" Rs.4290-5-3 for Jurisdiction.

Herein the above named Plaintiffs beg to submit as under :-

1. The Hirekudi toll of the D.L.B.Belgaum was contracted by Vijayendra Krishna Ganachari and others. Plaintiff 1 Venkatesh Anantrao Kulkarni, Narso Ramchandra Kulkarni and Bhimaji Anantrao Kulkarni were the only persons who stood surety for the said contract and it is learnt that the lands bearing R.S.Nos.,38,43,44 of Nagerhal Taluka Belgaum have been mentioned in the surety bond for the same. This was done it the year 1934-35.

2. The D.L.B. failed to recover the amount from the Toll-contractor and the D.L.B.therefore, through the Collector of Belgaum recovered the whole amount of the said contract from the second surety Narso Ramchandra Kulkarni. The whole of the balance was actually recovered by the sale of the said lands in recovery proceedings and were even confirmed. This surety bond must, therefore,

be deemed to have been discharged as soon as the sales were confirmed and the balance of the Toll-Contract was recovered and credited into the treasury.

3. Inspite of this, discharge of the Plaintiff 1, recovery proceedings have been again started against Plaintiff 1 and the lands belonging the Plaintiffs Nos. 2 and 3 by their partition arrangement (R.S.No. 151,238/1,23/1 of Karvinkop) and also some lands belonging to Plaintiff 1 (R.S.No.85/1,85/3,85/5 and 13/5 of Karvinkop) have been proclaimed for sale by the Mamlatdar and the Mamlatdar Taluka Belgaum has fixed 20th March 1945 as the date of auction of these lands.

4. The D.L.B. and the Collector have no legal right and have no jurisdiction to put up to sale the Karvinkop lands of the Plaintiffs by starting recovery proceedings again after the balance of the Toll-Contract was once recovered and credited from the Second surety Marso Ramchandra Kulkarni and thus by their conduct discharged the surety bond. Once the amount was - recovered from one surety, the surety bond is deemed to be cancelled by being discharged, the Collector or the D.L.B. have no legal right to receive the surety bond by starting fresh recovery proceedings.

5. The lands now put up for sale are not those which are mentioned in the surety bond.

6. The father of Plaintiff 3 is dead and Anant Timmaji has nothing to do with the surety bond. The lands of Plaintiff Nos.2 and 3 mentioned in para 3 have fallen to their share in partition before the recovery proceedings and Plaintiff 1 Venkatesh Anant has no share and has no right, title and interest in their lands put up for sale.

7. Plaintiff 1 had given a notice to the D.L.B. that the arrears from the Toll-Contractor were not being recovered in time and that he would not be responsible,

47
29

responsible, if they failed to take proper measure in time. Inspite of this proper measures of recovery were not taken against the Toll-Contractor within the proper time and hence the recovery from him was impossible for this reason also Plaintiff 1 is not now liable for the arrears.

8. The Court fee is paid on the declaration and relief for injunction and Rs.4290-8-3 is for jurisdiction. The cause of action for this suit arose on the date when fresh proceedings were started against the Plffs after discharging the surety i.e.in or about Feb.1942 and on the date when the suit lands were attached and proclaimed for sale after the proclaimation i.e. on about a day in March 1945.

9. This shit being against the Provincial Government this Court has special jurisdiction to try this suit.n

10. As the Deft No.2 is making recovery through the Collector as arrears of Land Revenue Deft No.1 is made a party to this suit and notice of suit to Defts is given under section 80 of the Civil Procedure Code and this suit is filed after expiry of the two months as per law.

11. The Plffs, therefore, pray for the following relief :-

(a). Plaintiff No.1 be declared as not liable in any way for the arrears of the Toll-contractor as per the surety bond. . .

(b) The recovery proceedings against him be permanently stopped and the proclaimation of sale of this lands be cancelled.

(c). It Mbe declared that the Plffs. 2 and 3 have got the lands now included inthe proclaimation sale issued by the Mamlatdar Belgaum, in a partition before the starting of recovery proceedings, against Plaintiff 1 and hence they are not liable to be proceeded against and a permanent injunction granted to stop the proceedings started against these lands and cancel the proclaimation of their sale.

12. This suit coming on this day for final - disposal before D.R.Ugrankar Esquire LL.B., Civil Judge, Senior Division, in the presence of Messrs.A.A.Mandagi and

and V.H.Mutalik-Desai Pleaders for Plaintiffs, and Mr.B.V. Jakati, Government Pleader for Deft.No.1 and Mr.S.I.- Guttigoli Pleader for Deft No.2 ,it is hereby ordered that Suit dismissed. Plaintiffs do pay the costs of the - Defendants and do bear their own costs.

-- 0---

BILL OF COSTS.

	Plff .	Deft.1.	Deft.No.2.
Stamp for Plaint.	38-0-0	---	----
- Do- for Vakalat.	0-10-0	0-10-0	0-10-0.
Process fees.	29-9-0.	----	---
Stamps for production of documents.	16-6-0	5-10-0.	5-10-0.
Witness Bhatta.	2-0-0	---	----
Pleaders' fees.	169-0-0.	169-0-0.	169-0-0.
Total Rupees.	255-9-0.	175-4-0.	174-10-0.
Rejected Costs.			
(Production of documents).	5-0-0.	5-0-0.	3-12-0.
Total Rs.	250-9-0.	170-4-0.	170-14-0.

Given under my hand and the seal of the Court this 4th day of Mary 1947.

Sd/.G.R.Kulkarni.
Karkun.

SEAL.

Sd/.D.R.Ugrankar.
17-4-1947.

Civil Judge,
Senior Division.

Sd/.A.A.Mandagi.&
Sd/.V.H.Mutalik-Desai,
Pleader for Plaintiffs.

Sd/. S.I.Guttigoli
Pleader for Deft.No.2.

Sd/. B.V.Jakati.
Pleader for Deft.No.1

-- 0----

DECREE.

In the Court of the Joint Civil Judge, Senior Division :-
At Belgaum.

Regular Civil Suit No. 457 of 1945.

1. Mahavir General Trading Co., a Registered Firm, doing business at Belgaum, Ravivar Peth..... Plff.

Vs.

1. The Provincial Government, Bombay.
2. Superintendent, Belgaum Central Prison .... Defts.

Claim Rs. - 1,443/- both for Court fee and Jurisdictio

Received on :- 10-12-1945.

Registered on:- 14-12-1945.

The Plaintiff states as under :-

1. The Plaintiff firm at the instance of the defendant supplied to the Belgaum Central Prison at Belgaum 11 tins of oil 12 bags of gram, 8 bags of salt, 11 tins of oil and 52 bags of bajari, in all worth Rs.1100/-. The said supply was made from 10-10-42 to 16-10-42. Besides empty gunny bags worth Rs.200/- still remain unreturned with Defendant 2 out of the amount thus due, only Rs.201/- are paid.

2. Thus, the principal amount of Rs.1099 and interest thereon at 12 p.c. from 16-10-42 to 10-10-42. Viz. Rs.344/- by way of damages and trade custom are due to the plff.

3. Deft No.2 contends that as the Plff failed to supply the articles as per requisition, he had to purchase the same elsewhere at high rates. The price of the above articles supplied has been deducted towards the difference. This contention of the defendants is untenable.

4. On the alleged dates of failure to supply, there was no completed contract between the plaintiff and defendants to supply particulars articles at particular rates. The tenders were called for by Deft.No.2 on 12-9-42 and he intimated to the Plff by his letter No.6643 dated 22-10-42 that the rates quoted by the Plff in his tender were accepted by the inspector - General of Prisons, Poona. Thus the contract became complete when the plaintiff received the said communication and not before. It was, therefore, perfectly open to the plaintiff

either

either to supply or not to supply whatever quanity he pleased at the rates quoted by the Defendants, prior to the said date.

5. The Defendants were bound to make immediate payment on delivery. When the defendants failed to make such payments for the articles delivered, plaintiff was justified in refusing to make further deliveries.

6. Though repeated demands were made for the said amount defendants have failed to pay the same and hence the suit.

7. Due notices of the said claim has been given to both the defendants by registered Post on 8-10-45 and the said notices were addressed to the persons mentioned in Para 2 of the said notice. The said notices were duly served on the addressees on 9-10-45. Copy of the said notice and registered acknowledgments are produced herewith.

8. The cause of action arose from 10-10-42 to 16-10-42 when the deliveries were made and price fell due. As 60 days of the notice under Section 80 of the Civil P.C. are to be excluded in computing the period of limitation, the suit filed to day is in time.

9. As the cause of action arose at Belgaum and Hindalga within the jurisdiction of this Court, this Court can try this suit.

10. The suit is valued at Rs.1443/- for Court fee and for the Jurisdiction the valus is the same.

11. At Belgaum Central Prison is the department of Bombay Provincial Government and as the articles were supplied at the instance of Deft.No.2 who is a servant of Deft.1 both have been impleaded in the suit.

12. Plaintiff, therefore, prays that decree may kindly be passed against the defendants or responsible defendants for Rs.1443/- with future interest and costs of this suit.

-- 0 ----

47
33

The suit coming on before M.S.Bagali Esqr.,B.A.LL.B. Joint Civil Judge,Senior Division, Belgaum in the presence of Messrs. N.Ramrao and P.B. Nandgadkar pleaders for the Plaintiff, and Mr.B.V.Jakati pleader for the Defendants 1 and 2.

It is hereby ordered that :- Defendant 1 do pay to the - Plaintiff the sum of Rs.60/- to the plaintiff and proportionate fees. Plaintiff to pay the Defendants' costs on the claim disallowed. i.e.Rs.1383 /-

-- 0-

BILL OF COSTS

	Plaintiff. Rs. As. Ps.	Defendants 1 & 2. Rs. As. Ps.
Mp for plaint....150--	0 - 0.	0 - 0-- 0.
Do- for power.....	0--10- 0.	0- 10 - 0.
- Do- for Exts.....	0- 10- 0.	6 - 4 - 0.
Pleaders fees on Rs.1443.....	72- 2- 0 72- 2- 0	72 - 2 - 0. 0 - 0 - 0
Witness Potagi.....	0 - 0- 0.	97 - 12 - 0.
Process fees.....	4 - 0 - 0-	7 - 0- 0.
	279 - 8 - 0	185 - 12- 0.
REJECTED COSTS.		
On plaint ...	124 - 6 - 0.	0-- 0- 0.
Pl.fees...	138 - 4- 0.	3 - 0- 0.
	16 - 14 - 0.	180 - 12 - 0.

Given under my hand and the Seal of the Court this 15th day of February 1947.

Sd/. S. G. Kulkarni.
Clerk.

Sd/. M.S.Bagali.
Jt.Civil Judge,S.D.
9-4-1947.

Pleader for Plff.

Pleader for Defts.1 & 2.

35 89

Suits:
Belgaum.
For a declaration that plaintiff No.1 is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs Nos. 2 and 3 are not liable to be sold.

A

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 10313
Bombay Castle, 28th October 1947.

Read Government Resolution, Legal Department, No.5228, dated the 22nd May 1947.

Letter from the Collector of Belgaum, No. L.A.W.668, dated the 9th October 1947, requesting sanction for the defence of

B

In the Court of the Civil Judge, (Senior Division), Belgaum. Civil Suit No. 192 of 1945.	:	of Civil Appeal No. 118 of 1947 in the Court of the District Judge, Belgaum, filed by the plaintiffs in the case noted in the margin.
Venkatesh Anantrao Kulkarni and two others. - - - - Plaintiffs; Vs.	:	
1. The Provincial Government the Province of Bombay,	:	
2. The President, District Local Board, Belgaum - - Defendants.	:	

B

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 118 of 1947 in the Court of the District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department, No. 4216, dated the 7th June 1946 and the favourable grounds contained in the judgment of the lower Court.

Submitted for signature
Orders at p. 2.
28/10
27/10
AS.

By order of the Governor of Bombay,

Original
R. M. Mehta,
Assistant Secretary to Government.

To

The Revenue Department,

The Commissioner, Southern Division,

The Collector of Belgaum,

The District Government Pleader, Belgaum.
(with the copy of appeal-memo.

Poona
8Kc.22.10.

Submitted after-visit
Quiant result of the appear

(Court fee of Rs. 38/-

Presented on 9.6.1947
Sd/-
Sheristedar.

Reg.Civil Appeal No.118 of 1947.

In the Court of the District Judge,
Belgaum.

1. Venkatesh Anantrao Kulkarni.
2. Anant Timaji Kulkarni — Appellants (Original Plffs. 1-3)
3. Krishnaji Bhimaji Kulkarni, age 19, now Major..

Vs.

1. The Provincial Government the Province of Bombay.
2. The District Local Board, District Belgaum by its Chief Officer, Mr.M.P.Wali, D.L.B.Belgaum.

Herein the abovementioned appellants beg to submit as under:-

The appellants filed suit No.192 of 1945 in the Court of the First Class Subjudge at Belgaum. The suit was dismissed on 4.3.1947 by the said Court. Being aggrieved by the decree and the judgment the appellants prefer this appeal and urge the following grounds of objections to it.

Grounds of objections.

1. The decision and the decree of the lower Court is against law and evidence on record.
2. The Lower Court erred in holding that surety bond is binding on the shares of the appellants.
3. The Lower Court ought to have held that the surety bond in question was discharged by the conduct and the negligent acts of the defts in respect of the other surety.
4. The Lower Court ought to have held that the setting asid of the sale of the lands of the ~~xxx~~ other surety was illegal and without jurisdiction and not warranted by the facts in that auction proceedings.
5. The Lower Court erred in holding that the land not mentioned in the surety-bond could be proceeded with after limitation and without creating any charge on the suit lands.
6. The Lower Court ought to have held that the lands in suit

from appellant No.1 after his protest to the deft no.2 against its negligent and illegal conduct in respect of the principal debtor

8. Proper inferences are not drawn and those drawn are erroneous.

9. Probabilities have not been properly considered.

10. The suit ought to have been decreed with costs.

On these among other grounds the appellants pray that the decision and decree of the lower Court be kindly set aside and the suit be decreed with costs throughout.

Belgaum, 9th June 1947.

Drafted and presented by.

Sd. M.A. Mandgi.
Advocate for the appellants.
Sd. V.H.Mutalikdesai.

Examined.
1. Necessary papers accompany.
2. Appeal is in time.
3. Appellant resides in British India.
4. Appeal memo is stamped with impressive stamps of Rs. 3.8.0.

Particulars to be entered in the register of appeals

Sd. V.S.Yekkundi
Clerk of the Court
13/6/1947

Order.

Admitted, Paper Book.
Costs to be deposited.

Sd. M.B.Honavar
14.6.1947 District Judge.

Order.

Paper Book charges paid. Notice under rule 11 of order 41 C.P.C. to issue.

Sd. M.B.Honavar.
15.7.1947. District Judge.

Process fee not paid in time.

Sd.
27/7/1947. Nazir.

(Below appeal memo in Civil Appeal No.118 of 1947)

Order.

Appellants and their pleaders absent.
The appeal is dismissed for default. Appellants do pay costs of respondents and bear their own.

Sd. V.H.Paralkar.
11th February 1949 Asst.Judge.

Guttigoli & Huke
(Govt.Pleader) (M/s/

Bill of Costs.	Appellant	Respondent 1.	Respondent 2.
Stamp for the appeal Memo	Rs.38/-;		
-do- for the Vakalat.	Rs.0-10-0	Rs.0-10-0	Rs.0-10-0
-do- for papers produced.	2-11-0	0-0-0	0-0-0
-do- for process	3-0-0	0-0-0	0-0-0
Pleaders' fees on Rs.4290/5/3.	167-11-0	167-11-0	167-11-0
Copying fees.	15-5-0		
Paper-book charges	19-10-0	9-0-0	0-0-0
	Rs.245.15.0	167.11.0	168.1.0.

39

Suits.
Belgaum.
For a declaration that plaintiff No.1. is not liable for the toll dues and the suit lands which have been allotted to the share of plaintiffs Nos.2 and 3 are not liable to be sold.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1048 9/E
Bombay Castle, 19th May 1955.

Read Government Resolution, Legal Department No. 10313, dated the 28th October 1947.

Letter from the District Government Pleader, Belgaum

In the Court of the Civil Judge, (Senior Division), Belgaum. Civil suit No.192 of 1945. Venkatesh Anantrao Kulkarni and two others..... Plaintiffs. vs. 1. The Provincial Government the Province of Bombay, 2. The President, District Local Board, Belgaum.... Defendants.	stating that the appeal No.118 of 1947 in the suit noted in the

margin was decided by the District Judge, Belgaum on the 11th February 1949 when the following order was passed:-

"Appellante and their Pleaders absent. The appeal is dismissed for default. Appellant do pay costs of respondents and bear their own."

Letter from the District Government Pleader, Belgaum forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the appeal is recorded.

By order and in the name of the Governor of Bombay,

original

(D.P.Shikhare),
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

KML/17

46

Submitted after vote

25 file no. 5 Belgium 2/47

TR
2015

simplest